

DEPARTMENT OF STATE REVENUE

Revenue Ruling #2000-05 ST

May 19, 2000

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

Sales/Use Tax – "Engaged in Business in Indiana"

Authority: IC 6-2.5-3-1(c)

The taxpayer requests the Department to rule on whether or not the taxpayer has sales/use tax nexus in Indiana.

STATEMENT OF FACTS

The taxpayer is a direct sales/network marketing company that sells dietary supplements and other health products to independent distributors/consumers in Indiana. Distributors own and operate their own businesses in which they can purchase the taxpayer's products for resale or personal consumption. Distributor's orders for products, whether for their own consumption or for resale, are submitted to the taxpayer's home office (not located in Indiana) for credit approval of the distributor, processing and shipment (sales are consummated outside of Indiana). Products are shipped by common carrier. Distributors do not collect payment on products on behalf of the taxpayer, instead, any payments collected by distributors are a result of their own sales of their own inventory of taxpayer products.

The distributors are not operating under the authority and/or behalf of the taxpayer, nor does the taxpayer maintain any stock of goods in Indiana. Products purchased by distributors become the distributor's own property to do with whatever they decide to do. Distributors can resell the products, personally consume the products, or give away the products for free or at reduced pricing. The taxpayer has a recommended suggested retail price for each product the distributors wish to resell, however, it does not require the distributors to resell the products at those prices. Distributors are only limited in how

they can use the taxpayer's name and trademarks, claims they make about the products, and claims of future income should a person become a distributor.

DISCUSSION

IC 6-2.5-3-1(c) states;

"A retail merchant engaged in business in Indiana" includes any retail merchant who makes retail transactions in which a person acquires personal property for use, storage, or consumption in Indiana and maintains:

- (1) an office, place of distribution, sales location, sample location, warehouse, storage place, or other place of business which is located in Indiana and which the retail merchant maintains, occupies, or uses, either permanently or temporarily, either directly or indirectly, either by himself or through an agent or subsidiary; or
- (2) a representative, agent, salesman, canvasser, or solicitor who, while operating in Indiana under the authority of and on behalf of the retail merchant or a subsidiary of the retail merchant sells, delivers, or takes orders for sales of tangible personal property to be used, stored or consumed in Indiana.

In the instant case, the taxpayer's sale of its products to its Indiana independent distributors does not fall within the ambit of IC 6-2.5-3-1(c), therefore, the taxpayer is not defined as "A retail merchant engaged in business in Indiana". As a result, the taxpayer does not have sales/use tax nexus in Indiana.

RULING

The Department rules that the taxpayer's sale of its products to its Indiana independent distributors does not give the taxpayer sales/use tax nexus in Indiana.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this

ruling, a change in a statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

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